

CV-05-420-MWL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DARRYL J. JONES, JEREMY
ALBRIGHT, ANTONIO BRYANT,
SHANNON MORELAND,

Plaintiffs,

vs.

GEIGER CORRECTIONS CENTER
and LEON LONG,

Defendants.

NO. CV-05-386-MWL

ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING CLASS
CERTIFICATION, DENYING MOTION FOR
APPOINTMENT OF COUNSEL, AND
DIRECTING COMPLAINT BE SEVERED

BEFORE THE COURT is a Response to the magistrate judge's Report and Recommendation to deny class certification and to sever the complaint. Only Plaintiff Shannon Moreland signed the Response in which he requests a District Court Judge preside over the remainder of this action. Plaintiff Moreland asserts the other plaintiffs "concur," and asks the court to grant their "Motion for Appointment of Counsel" (Ct. Rec. 2).

Plaintiff Moreland contends the appointment of counsel is necessary due to the complexities of a class action and the procedural problems of a multiple-plaintiff action. In the initial Motion, Plaintiffs asserted they had no legal training and class action complaints are too complex to initiate, litigate and resolve.

1 This court has discretion to designate counsel pursuant to 28
2 U.S.C. §1915(e)(1) only under exceptional circumstances. *Terrell v.*
3 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Determining whether
4 exceptional circumstances exist requires evaluating "the likelihood of
5 success on the merits and plaintiff's ability to articulate his claims
6 *pro se* in light of the complexity of the legal issues involved." *Id.*
7 (citation omitted).

8 Plaintiff Shannon Moreland contends the issues in this action,
9 which the Plaintiffs request proceed as a class action lawsuit, are
10 complex; Plaintiff Moreland complains legal assistance is unavailable
11 and law library time is limited. In light of the decision to sever
12 the complaint, and to require Plaintiffs to proceed separately if they
13 choose, the record does not reflect exceptional circumstances which
14 warrant the appointment of counsel at this time.

15 For the reasons set forth by the magistrate judge, **IT IS ORDERED**
16 the Report and Recommendation (Ct. Rec. 10) is **ADOPTED in its**
17 **entirety. IT IS FURTHER ORDERED** Plaintiffs' Motion for Appointment of
18 Counsel and for Class Action Certification (Ct. Rec. 2) is **DENIED**.
19 This case will proceed before the magistrate judge, subject to
20 objections as provided in the Local Rules for the Eastern District of
21 Washington.

22 For the sake of administrative ease, the court will order that
23 each Plaintiff's claim be severed from the claims of the others.
24 Plaintiff Darryl J. Jones will proceed in this action, while the other
25 three Plaintiffs will proceed in three separate civil actions to be
26 opened by the District Court Executive. Each Plaintiff will proceed
27

1 with his own action and will be solely responsible for his own action
2 and his own filing fee.

3 The District Court Executive will be directed to assign each new
4 action to the same judicial officer assigned to the instant action.
5 The District Court Executive shall make appropriate adjustment in the
6 assignment of civil cases to compensate for this reassignment.

7 According, **IT IS ORDERED:**

- 8 1. The claims of Plaintiffs Jeremy Albright, Antonio Bryant,
9 and Shannon Moreland are severed from the claims of
10 Plaintiff Darryl J. Jones;
- 11 2. Plaintiff Darryl J. Jones shall proceed as the sole
12 Plaintiff in case No. CV-05-386-MWL; and
- 13 3. The District Court Executive is directed to:
 - 14 a. Open three separate civil actions for Plaintiffs Jeremy
15 Albright, Antonio Bryant, and Shannon Moreland;
 - 16 b. Assign each action to the judicial officer to whom the
17 instant case is assigned and make appropriate
18 adjustment in the assignment of civil cases to
19 compensate for such assignment;
 - 20 c. Place a copy of this Order, the complaint and the
21 appropriate application to proceed *in forma pauperis* by
22 a prisoner, in each of the three files opened for
23 Plaintiffs Jeremy Albright, Antonio Bryant, and Shannon
24 Moreland;
 - 25 d. Strike from the caption of each Plaintiff's complaint
26 all Plaintiffs' names except the name of the individual
27

1 Plaintiff proceeding in the action; and

2 e. Send each Plaintiff an endorsed copy of his complaint
3 bearing the amended caption and the case number
4 assigned to his own individual action.

5 **IT IS SO ORDERED.** The District Court Executive shall enter this
6 Order and forward copies to Plaintiffs Darryl J. Jones, Jeremy
7 Albright, Antonio Bryant, and Shannon Moreland.

8 **DATED** this 28th day of December 2005.

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10 s/ Fred Van Sickle
11 FRED VAN SICKLE
12 UNITED STATES DISTRICT JUDGE
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 - 25 d. Strike from the caption of each Plaintiff's complaint
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10 s/ Fred Van Sickle
11 FRED VAN SICKLE
12 UNITED STATES DISTRICT JUDGE
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